FAX : 0532-2400149

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 19/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70819-70820/2016-SM[BR] dated 22/04/2016

am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/53400/2014	COMMISSIONER OF CUSTOMS-GHAZIABAD 202...WING A C.G.O. COMPLEX-II, KAMLA NEHRU NAGAR, GHAZIABAD,UTTAR PRADESH 201002
2	E/53601/2014	HINDUSTAN ADHESIVE LTD VILLAGE-ACHEJA, G.T.ROAD,DADRI GAUTAM BUDDH NAGAR UTTAR PRADESH
		Name and Address of Respondent
3		HINDUSTAN ADHESIVE LTD VILLAGE ACHEJA, G.T. ROAD DADRI,,, GAUTAM BUDH NAGAR ,UP
4		C.C.E. & S.T.-Ghaziabad 202...WING A C.G.O. COMPLEX-II,KAMLA NEHRU NAGAR, GHAZIABAD, UTTAR PRADESH-201002

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

R C Verma,Advocate
D-34,Patel nagar-
2,Ghaziabad,U.P-201001

REGISTERED / AD

...ar Association, CESTAT, Allahabad

7 Director Publications, Customs, Excise. I.P. Estate, Delhi

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

9 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

10 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

11 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15

12 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

13 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

14 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

15 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

16 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

17 C.D.R. 18 Office Copy 19 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, REGIONAL BENCH : ALLAHABAD

Ex.Appeal No.53601/14

Arising out of OIA No.GZB-EXCUS-000-APP-257-13-14 dated 21/03/2014 passed by the Commissioner (Appeals), Central Excise & Customs, Ghaziabad.

M/s Hindustan Adhesive Ltd.

...APPELLANT(S)

VERSUS

Commissioner of C.Ex. Customs & S.Tax, Ghaziabad

RESPONDENT (S)

APPEARANCE

Shri Rakshit Verma, Adv. for the Appellant (s)
Shri Vikram Kaushik, Asstt. Commr. (A.R.) for the Respondent

Ex.Appeal No.53400/14

Arising out of OIA No.GZB-EXCUS-000-APP-257-13-14 dated 21/03/2014 passed by the Commissioner (Appeals), Central Excise & Customs, Ghaziabad.

Commissioner of C.Ex. Customs & S.Tax, Ghaziabad

...APPELLANT(S)

VERSUS

M/s Hindustan Adhesive Ltd.

RESPONDENT (S)

APPEARANCE

Shri Vikram Kaushik, Asstt. Commr. (A.R.) for the Respondent
Shri Rakshit Verma, Advocate for the Respondent (s)

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

DATE OF HEARING & PRONOUNCEMENT : 22.04.2016

Final ORDER NO. 70819-70820/2016

Per Mr. Anil Choudhary :

Both the assessee and Revenue have filed these cross appeals arising out of order dated 21.03.2014 passed by the Commissioner (Appeals) Central Excise and Service Tax, Ghaziabad.

2. The Revenue have filed an application for withdrawal of their Ex.Appeal No.E/53400/2014-SMB under the litigation policy. Thus, the appeal of Revenue is disposed off as withdrawn, without entering into the merits.

3. Ex.Appeal No.E/53601/2014 is filed by the assessee, M/s Hindustan Adhesive Limited. In this appeal among other grounds, the main ground urged is that there being no element of suppression or contumacious conduct on the part of the appellant, the extended period of limitation is not invokable. Further, the whole demand relates to the extended period, thus, the appeal is fit to be allowed.

4.1 The brief facts are that the appellant is a manufacturer of excisable goods namely self-adhesive tapes, falling under Chapter 39 of CETA,1985. The appellant procured one of its inputs (poly-propylene) from M/s Reliance Industries Ltd., (RIL) a 100% EOU against the DTA sale and availed credit of duty paid on DTA clearance. That pursuant to Audit for the period April, 2007 to February, 2009, it appeared to Revenue that the appellant have taken excess Cenvat credit of education cess and S.H.E.Cess amounting to Rs.6,31,694/- (Rs.1,79,212/- + Rs.8,9605/-) in the financial year 2007-08, and Rs.2,41,912/- + Rs.1,20,965/- in the financial year 2008-09, on the strength of invoices issued by RIL for purchase of input polypropylene (plastic granules) which did not appear to be admissible to the appellant as the same was not covered under Rule 3 of Cenvat Credit Rules 2004. On perusal of invoice, the relevant document for taking the Cenvat credit, it was evident that two types of E. Cess and S.H.E.Cess has been levied and paid on the concerned consignment. Education Cess is levied on CVD and the other on aggregate duty of Customs. It further appeared that Cenvat credit on both the cess, are not allowable to the appellant. It further appeared that the appellant have taken wrong Cenvat credit of education cess and S.H.E Cess on Excise duty levied, at aggregate duty of Customs under Section 3 of the Central Excise Act, 1944.

4.2 Further, the SCN dated 20/1/12 states that on being pointed out to the appellant that they have taken inadmissible Cenvat credit totalling Rs.10,90,087/-, the appellant admitted in part and debited an amount of Rs.1,22,740/- in RG-23A on 17/11/10 along with interest and further deposited vide challan G.R.7 for Rs.6787/- on 12.05.2011 and Rs.36,670/-on 17/11/10, but denied to reverse/debit the Education Cess and S.H.E. cess, which appeared to be admissible to the appellant. Accordingly, it appeared to Revenue that the appellant have knowingly and willfully taken excess Cenvat credit in contravention of the provisions of the Act read with the Cenvat Credit Rules and the same appeared to be recoverable. Accordingly, the SCN proposed to recover such excess Cenvat credit along with interest and further penalty was proposed under Rule 15 of CCR read with Section 11 AC of the Act.

5.1 The appellant appeared and contested the show cause notice both on merits and on limitation. Relying on the provisions of Rule 3 of CCR, it was contended that Cenvat credit of education cess and S.H.E.Cess levied under the Finance Act 2004 and Finance Act 2007 respectively, as levied on Excise duty under Central Excise Act, 1944 is also admissible.

5.2 The SCN was adjudicated vide order-in-original dated 27/8/13 by the Additional Commissioner confirming the proposed demand and appropriating the amount already reversed or paid along with interest and further equal amount of penalty of Rs.10,90,087/- was imposed under Rule 15 (2) of CCR read with Section 11 AC of the Act.

6. Being aggrieved the appellant preferred appeal before the ld. Commissioner (Appeals), who was pleased to allow the appeal in part reducing demand to Rs.1,29,728/- (Rs.1,03,218/- CVD and Rs.26,515 CVD) and also retained the equivalent penalty of Rs.1,29,728/- observing that the appellant has admitted in the appeal that they have availed excess credit of Rs.1,03,213/- (as mentioned in Annexure B of SCN) of BED against invoices where the excess duty had been paid by

the supplier-EOU as per Sl.No.2 of Notification No.23/2003-CE (NT) and contended that the appellant has already debited an amount of Rs.1,22,740/- in this regard, which has been appropriated by the Additional Commissioner. He further observed that besides the amount of Rs.1,03,213/- the disputed demand also includes excess amount of Cenvat credit amounting to Rs.26,515/- as mentioned in Annexure A of the SCN pertaining to credit of CVD availed over and above the CVD leviable as per relevant invoices. The Commissioner (Appeals) further found that as per Clause VII of Rule 3 (1) of CCR, the credit of CVD (BED) in respect of invoices that the Excise duty has been paid by the supplier-EOU as per S.No.1 of Notification No. 23/03-CE (NT), is available only to the extent of CVD leviable and appellant have not contested the said demand confirmed by the adjudicating authority. It was further observed that credit of CVD/BED in respect of invoices, whether the Excise duty has been paid by the supplier-EOU as per Sl.No.2 of Notification No. 23/2003-CE (NT), is restricted to the formula under Rule 3(7), hence, the credit more than that, is not admissible to the appellant. As regards, invocation of extended period of limitation and imposition of penalty, the ld. Commissioner observed that on the one hand, the appellant has contended that availment of credit was duly shown by the appellant in the statutory returns filed and thus, they have not suppressed the facts, while on the other hand, they are contending that there is no column in the statutory returns itself, so as to separately show the quantum of Cenvat credit availed on input supplied by 100% EOU and therefore, they cannot be charged with the allegation of willful suppression of facts. The ld. Commissioner

(Appeals) further observed that under the provisions of Rule 9(5) of CCR, it is onus of the manufacturer to ensure that they have availed proper credit and the burden of proof regarding admissibility of any credit lies upon the manufacturer taking such credit. The fact of availment of excess credit was detected by the Audit team. The appellant had not brought any evidence on record in this appeal to show that availment of excess credit was in the knowledge of the Department prior to the said audit of the records. Accordingly, he upheld the finding that the appellant has suppressed the facts and contravened the provisions of Rule 3 of CCR with intent to avail inadmissible credit and accordingly, held the extended period of limitation is invocable.

6. The appellant assessee being aggrieved have carried the matter before this Tribunal.

7. The ld. Counsel, Mr.Rakshit Verma, Ld. Advocate, for the appellants, urges that none of the elements for extended period of limitation under the provisions of Section 11A have been found, being fraud, collusion, any wilful misstatement or suppression of facts or contravention of the any provisions of the Excise Act or the Rules made there-under with intent to evade payment of duty. It is further contended that the issue is only a matter of change of the opinion on the part of the Revenue, in raising the demand. The appellant had made appropriate disclosures by filing returns regularly wherein the Cenvat credit taken was disclosed. In case of any doubt, the Department could have asked for clarifications and audit inspection of

documents. Further, there is no column in the prescribed returns, wherein the appellant could show as to the quantum of Cenvat credit availed on input supplied by 100% EOU separately. Thus, there is no basis of holding that there was suppression on the part of the appellant and as such the finding on suppression of the Commissioner (Appeals) is vitiated and fit to be set aside. The ld. Counsel for the appellants, relies on the ruling of Honourable Calcutta High Court in CCE, Kol.I Vs. Web Impression (India) Private Ltd.: 2011 (264) ELT 193 (Cal) where under the fact that the Asstt. Commissioner did not make any enquiry or inspection in spite of the explanation submitted by the assessee, it was held that there was no suppression and as such, extended period of limitation was not invocable.

8. The ld.A.R. for revenue relies on the impugned order.

9. Having considered the rival contentions and on perusal of the records, I hold that the appellant had made appropriate disclosures in the returns filed with the Revenue and as such, no case of suppression or contumacious conduct is made out against the appellant. Accordingly, I hold that the extended period of limitation is not attracted. Accordingly, I set aside the demand and penalty retained by the Commissioner (Appeals). So far the Commissioner (Appeals) has deleted the demand and penalty to that extent, there is no interference by this Tribunal. Thus, the appeal is allowed with consequential benefits.

10. To sum up, the appeal of the assessee being Ex.Appeal No. E/53601/14-SMB is allowed and the Ex.Appeal No.E/53400/14-SMB by Revenue stands dismissed as withdrawn.

(Pronounced in the open Court)

Sd/-

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

mm

प्रमाणित प्रति / Certified True Copy

16/10

सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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38, एम. जी. मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001